IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.8417 of 2007

Mahapalika Arogya Seva Karmachari
Sanghatana, Mumbai Petitioner

Vs.

Municipal Corporation of
Greater Mumbai and anr. Respondents

Mr.Prakash Devdas for petitioner.

Mr.A.Y.Sakhare, Senior Counsel with Mr.A.J. Bhor for
respondent-Corporation.

CORAM: B.H.MARLAPALLE, J.

November 22, 2007.

P.C.

1. Heard Mr.Prakash Devdas, the learned counsel for the petitioner - Union and Mr.Sakhare, the learned Senior Counsel for the respondent - Corporation. This petition impugns the interlocutory order passed by the learned Member of the Industrial Court at Mumbai on 5/10/2007 rejecting the application at Exhibit U-2 filed for interim relief in Complaint (ULP) No.416 of 2007 under Section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971. A complaint has been filed under Section 28 read with Items 5 and 9 of Schedule IV of the said Act.

2. As per the Union, the respondent - Corporation has issued a circular inviting applications for promotion to the post of Clerk, Clerk-cum-Typists and Typists and in response to the same, some of the members of the petitioner - Union who are redesignated as Women Health Workers had applied but their applications were refused to be accepted by the Corporation on the ground that they are not employees of the Corporation. The Union claims that in Reference IT No.39 of 2000 in all nine demands raised by it against the Corporation were referred for adjudication and by the Part I Award passed on 2/3/2002 in the said Reference, the learned Member of the Industrial Tribunal held that the Community Health Volunteers are workmen as defined under Section 2(s) of the Industrial Disputes Act, 1947. Whereas as per the Corporation, the said reference has been finally decided and the Final Award dated 13/1/2004 has partly allowed the Reference, in asmuchas Demand Nos.1 and 3 to 6 have been rejected and Demand No.2 has been partly allowed by directing the Corporation to increase the honorarium by Rs.150/- per month so that each of the Community health Worker shall be entitled to a total amount of

Rs.900/- per month with effect from the date of Award i.e. 13/1/2004. Similarly Demand No.7 has been partly allowed and the Corporation has been directed to bring in uniformity in the working hours of those Health Workers where the Government does not give grant-in-aid and working hours shall be similar to the working hours of dispensaries i.e. from 9 a.m. to 4 p.m. to the workmen in the dispensaries as well as Health posts. This Final Award has been challenged by both the parties and the Corporation has filed Writ Petition No.8947 of 2004 whereas the petitioner - Union has filed Writ Petition No.7958 of 2005. In Writ Petition No.8947 of 2004 while granting Rule this Court by the order dated 3/11/2004 has granted liberty to the Corporation pending the hearing and final disposal of the petitioner to fix the timings of the duty other than as prescribed under Clause (4) of the Award subject to that the total working hours for every employee for any day should not exceed the outer limit of seven hours. Whereas Writ Petition No.7958 of 2005 filed by the Union has been just admitted without any interim relief.

3. The Union, therefore, claimed before the

Industrial Court in its fresh complaint filed under the Act that in terms of Part I Award rendered by the Industrial Tribunal, its members are required to be treated as employees of the Corporation and, therefore, they are eligible to be considered for promotion. The relief prayed for in the complaint is for directions to implement the Award (Part I) and allow the women health workers to compete for the post of Clerks and allied cadres as per the promotion rules and to promote such applicants, if they are found to be fit in the concerned posts. The learned Member of the Industrial Court while rejecting the prayer for interim relief by the impugned order has referred to Part I Award as well as Final Award passed in Reference (IT) NO.39 of 2000 and also to the pendency of writ petitions challenging the final award by both the parties. The learned Member also referred to the order passed in Writ Petition No.1300 of 2005 on 26th April 2005 in which it has been noted that on the Final Award having been passed in the Reference, the Part I Award will stand merged with the Final Award.

4. The learned counsel for the petitioner - Union by relying upon the decision in the case of Cox and

Kings (Agents) Ltd. Vs. Workmen **[1977 (1) LLJ 471]** and the decision of this Court in the case of Shaukat Ali & anr. Vs. Economic Engineering Corporation & ors. **[2003 III CLR 364]**, submitted that the findings recorded by the Industrial Tribunal in the Part I Award will be binding on the Corporation and the members of the petitioner Union ought to be treated as the employees of the Corporation. Consequently, they are eligible to apply for the promotional posts along with other employees of the Corporation. This argument cannot be accepted as the Part I Award has merged in the Final Award and the Industrial Tribunal in the Final Award has held that if the workmen concerned are paid honorarium and not any salary, there are no service rules under which they can claim that they are entitled to permanency benefits or absorption as prayed in the demand under adjudication. The Final Award is a subject matter of challenge by both the parties in Writ Petition No.8947 of 2004 and Writ Petition No.7958 of 2005. The Final Award has rejected the Union's contention that the Community Health Volunteers are workmen of the Municipal Corporation.

5. When the issue of employer - employee

relationship is still pending adjudication before this Court, the learned Member of the Industrial Tribunal rightly held that the Union failed to make out a prima facie case of unfair labour practice on the part of the Corporation in not considering the Community Health Volunteers as its employees. Mr.Devdas submitted that irreparable loss would be caused to the members of the petitioner, specially those who are eligible to apply to compete in the selection process as a good number of them are due to retire soon and they would have no opportunity of competing for promotion. In fact, interim relief prayed for is nothing short of the final relief and when the main question regarding employer - employee relationship has been held against the Union in the Final Award, the learned Member of the Industrial Court rightly declined to allow the application under Section 30(2) of the Act for granting interim relief during the pendency of the complaint. This view taken by the Industrial Court cannot be termed as perverse or patently erroneous. It would be at the same time necessary that the pending petitions are decided expeditiously and the promotions in response to the concerned scheme that may be announced by the Corporation will have to be made subject to the final

outcome in these petitions.

6. Hence, there is no case made out to cause interference in the impugned order under Article 227 of the Constitution and the petition is hereby rejected summarily. However, it is directed that the promotions effected, if any, in response to the scheme which is subject matter of the pending complaints shall be subject to the final outcome in Writ Petition Nos.8947/2004 and 7958/2005. Both the petitions be clubbed together and listed for final hearing after the Summer Vacation of 2008.

(B.H.MARL